

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GALE E. WEST,
Plaintiff,
v.
JOSEPH LEHMAN, *et al.*,
Defendants.

Case No. C05-5239RBL

REPORT AND RECOMMENDATION

NOTED FOR:
February 24th, 2006

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has paid the filing fee and is not proceeding *in forma pauperis*. (Dkt. # 1). Before the court is plaintiff's motion to withdraw the complaint without prejudice. (Dkt. # 12). The defendants do not oppose the motion. (Dkt. # 13).

Procedural History

This action was commenced April 1st, 2005 when plaintiff paid the filing fee and the complaint was filed. (Dkt. # 1). An answer was filed August 15th, 2006. (Dkt. # 10). The court then filed a scheduling order. (Dkt. # 11). The time allotted for discovery in this action has just expired and dispositive motions are due on or before February 24th, 2006. (Dkt. # 11).

Discussion

Plaintiff's motion must be made under Fed. R. Civ. P. 41(a)(1). Such motions must be made

1 prior to the filing of an answer. Here, an answer was filed by defendant over four months before the
2 motion to dismiss. (Dkt. # 10 and 12). The court would not normally consider this motion as the
3 motion is untimely. Defendants have indicated they do not oppose dismissal without prejudice.
4 (Dkt. # 13). The motion should therefore be **GRANTED**. A proposed order accompanies this
5 Report and Recommendation.

6 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
7 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
8 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
9 appeal. Thomas v Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b),
10 the clerk is directed to set the matter for consideration on **February 24th, 2006**, as noted in the
11 caption.

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13 DATED this 30th day of January, 2006.

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/S/ J. Kelley Arnold

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J. Kelley Arnold

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United States Magistrate Judge

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